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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,787	06/11/2001	Steve Goddard	UNL 3055.1	1463

7590

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Michael J. Thomas  
Harness, Dickey & Pierce  
7700 Bonhomme Avenue  
Suite 400  
St. Louis, MO 63105

EXAMINER
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HU, JINSONG

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/878,787

Applicant(s)

GODDARD ET AL.

Examiner

Jinsong Hu

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 3-6, 11, 13-16 and 20-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-10,12 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date see attachment.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The IDS mailed on: 9/17/01; 4/11/03; 3/31/04.

### **DETAILED ACTION**

1. Applicant's election with traverse of 1-2, 7-10, 12 and 17-19 (Group I) in the reply filed on 4/21/05 is acknowledged. The traversal is on the ground(s) that applicant believes all of the claims are drawing to the same system. This is not found persuasive because Applicant did not provide the classification for each of the claims Group, in the contrast, Examiner has explained the details for the reason of the restriction in previous Office Action and provided the corresponding class/subclass for each Group of the claims.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 1-2, 7-10, 12 and 17-19 are presented for examination.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Devine et al. (US 6,763,376).

5. As per claim 1, Devine teaches the invention as claimed including a system responsive to client requests for delivering data via a network to a client [col. 1, lines 11-20], said system comprising:

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3; col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 – col. 22, line 3]; dispatch software executing in application-space on the dispatch server to selectively assign the client requests to the network servers [col. 17, lines 9-15]; and protocol software, executing in application-space on the dispatch server and each of the network servers, to interrelate the dispatch server and network servers as ring members of a logical, token-passing, fault-tolerant ring network [col. 11, lines 57 – col. 12, line 2], wherein the plurality of network servers are responsive to the dispatch software and the protocol software to deliver the data to the clients in response to the client requests [col.17, lines 16-19].

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 7-10, 12 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devine et al. (US 6,763,376) in view of Jorgensen (US 6,590,885).

8. As per claims 2, 10 and 12, Devine teaches the invention substantially as claimed in claim 1. Devine also teaches the communication protocol in the system is network standard protocol TCP/IP [col. 13, line 65 – col. 14, line 3]. Devine does not specifically disclose an Open Source Interconnection (OSI) and the steps of switching of the client requests at layer 4 of the OSI reference model, translates addresses associated the client requests at layer 2 of the OSI reference model and reconstruction software to coordinate state reconstruction after fault detection. However, Jorgensen on the other hand teaches an Open Source Interconnection (OSI) and the steps of switching of the client requests at layer 4 of the OSI reference model, translates addresses associated the client requests at layer 2 of the OSI reference model and reconstruction software to coordinate state reconstruction after fault detection [col. 41, line 67 – col. 42, line 6; col. 42, line 19 – col. 45, line 38; col. 46, line 62 – col. 48, line 5]. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Devine and Jorgensen because Jorgensen's OSI is a standard model in the art for communicating data packet with TCP/IP protocol. One of ordinary skill in the art would have been motivated to utilize a standard model in the system to make the system easily being configured and integrated.

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9. As per claim 7, Devine teaches the protocol software communicates at any one of the layers of the reference model [Fig. 5A].

10. As per claims 8 and 9, Jorgensen teaches the reference model is the Open Source Interconnection (OSI) reference model, and wherein the dispatch software performs switching of the client requests at layer 7 of the OSI reference model and then performs translating addresses and switching of the client requests at layer 3 of the OSI reference model [col. 42, lines 33 – col. 45, line 38; col. 47, line 56 – col. 48, line 5].

11. As per claim 17, Devine teaches the invention substantially as claimed including a system responsive to client requests for delivering data via a network to a client [col. 1, lines 11-20], said system comprising:

at least one dispatch server receiving the client requests [320, 324, 330, Fig. 3; col. 16, lines 29-33; col. 21, lines 60-65]; a plurality of network servers [col. 21, line 66 – col. 22, line 3]; dispatch software executing in application-space on the dispatch server to selectively assign the client requests to the network servers, and protocol software, executing in application-space on the dispatch server and each of the network servers to interrelate the dispatch server and network servers as ring members of a logical, token-passing, fault-tolerant ring network, wherein the plurality of network servers are responsive to the dispatch software and the protocol software to deliver the data to the clients in response to the client requests [col. 11, lines 57 – col. 12, line 2; col. 17, lines 9-19].

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12. Devine does not specifically teach the system is structured according to an Open Source Interconnection (OSI) reference model. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teaching of Devine and Jorgensen because Jorgensen's OSI is a standard model in the art for communicating data packet in TCP/IP protocol. One of ordinary skill in the art would have been motivated to utilize a standard model in the system to make the system easily being configured and integrated.

13. As per claim 18 and 19, Jorgensen teaches the step of translates addresses associated with the client requests at layer 2 and layer 3 of the OSI reference model [col. 42, lines 19-67].

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Martin (US 6,63,368) and Weber (US 6,424,993) disclose message dispatch system.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jinsong Hu whose telephone number is (571) 272-3965. The examiner can normally be reached on 8:00 AM - 5:30 PM.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jinsong Hu

June 22, 2005



VIET D. VU  
PRIMARY EXAMINER